

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service)	WC Docket No. 05-195
Fund Management, Administration, and)	
Oversight)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

**COMMENTS OF THE CHICAGO PUBLIC SCHOOLS IN
NOTICE OF PROPOSED RULEMAKING
AND
FURTHER NOTICE OF PROPOSED RULEMAKING
(FCC 05-124)**

INTRODUCTION

In the Notice of Proposed Rulemaking, FCC 05-124, the Commission has asked for comment on a wide-ranging set of issues, ranging from the structure of the Universal Service Funds to how the funds should be managed and how funds should be disbursed. Chicago Public Schools (CPS) applauds the Commission's efforts to continually improve the Universal Service Programs, and in particular the Universal Service Program for Schools and Libraries (more commonly known as the E-rate program).

The E-rate program has become a critical component of education technology in the United States. Through the discounts provided by the E-rate program, schools and libraries all over the country have been able to upgrade their telecommunications infrastructure, bringing new and innovative services to their students. Indeed, without the benefits of the E-rate program, Chicago Public Schools would be unable to offer critical services that have been instrumental in meeting the challenges of the No Child Left Behind program. Innovative distance learning courses to meet students' special needs in the area of supplemental services and special education, online professional development, and the electronic reporting of data on students' progress are all critical components of No Child Left Behind which are facilitated by the E-rate program.

Over the past several years, the Commission and the Universal Service Fund (USF) Administrator alike have made tremendous strides in improving the program. These improvements have included cracking down on fraud, attempts to simplify the application process, and working to overcome challenges to the funding mechanism. These improvements have helped to ensure that the E-rate program runs more smoothly, more fairly, and more efficiently. Indeed, we have already seen the benefits of these changes taking place, as a multitude of applicants who had not been able to benefit from Internal Connections in several previous years were able to benefit from E-rate discounts on their Internal Connections

Nevertheless, there are still many areas where the program can improve. We welcome this opportunity to share our opinions on how to improve the program, and thank the Commission for raising these important issues. We look forward to working with the Commission and participating in future rulemakings to further improve the E-rate program so that every student in America can garner the benefits of a 21st century education.

COMMENTS

Management and Administration of the Universal Service Fund

While CPS does not have direct experience with all aspects of the Fund's administration, we do have significant direct experience with the Schools and Libraries portion of the fund. Therefore, we will limit our comments to that portion of the fund, except in so far as changes in other aspects of the fund could directly impact the administration of the E-rate.

USF Administrative Structure

The Commission has specifically sought comments on a number of issues related to the USF's Administrative structure. In particular, the Commission raises the issue of whether the current administrator, the Universal Service Administrative Company (USAC), is effective and efficient, and whether it should be replaced.¹

CPS believes that the current administrator should not be replaced. USAC has, in one form or another, administered the Universal Service Funds for almost a decade. During that time, USAC has developed significant experience with the program. USAC has also worked tirelessly to continuously improve the programs, examining its own internal priorities and applying resources to areas that need help.

This is not to say that USAC's tenure as Administrator has been perfect. However, we believe that, as the Commission continues to simplify the program and clarify the corresponding rules, USAC will be better able to administer the program effectively. Furthermore, we believe that the transition to a new Administrator could introduce significant disruptions to the program. These disruptions could include additional funding delays, a need for new rule changes, a completed redesign of the back-end computer systems to run the program, and other instabilities. Given the problems that have resulted from instability in the past, FCC should avoid introducing further instability

¹ See *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 05-124, paragraph 12 (hereinafter, *NPRM*)

into the program unless absolutely necessary. We therefore believe that the administration of the program should remain with USAC.

The Commission also asks whether the Fund Administrator should be selected as part of a competitive bidding procedure.² Such a competitive bidding procedure would likely focus on cost efficiency as a primary criterion for selection. While we will discuss this in further detail below, we believe that the most important criteria in the selection of the Fund Administrator is whether the administrator can process applications in a timely, efficient, and accurate manner. Current inefficiencies in the processing of applications cost applicants and service providers millions of dollars due to missed deadlines, inflated costs to cover the impact of delays on implementation, and other problems which result from a lack of timely funding commitments.

Furthermore, as discussed above, introducing a new Administrator – whether through a competitive bidding process or any other process – could introduce a host of new delays into the funding process, with no guarantee that the overall administration of the program would improve. Such delays should be avoided at all costs, since the existing delays already impose a significant burden on applicants and service providers alike. Should the Commission want to improve the current administration of the program, we suggest that additional resources be committed to USAC with direction to improve program clarity on the front end of the process, which will reduce the need for denials, appeals, SPIN changes and service substitutions on the back end of the process.

The Commission has also asked whether the current rules governing the responsibilities and capabilities of the Administrator need further modification.³ We believe that the role of the Fund Administrator should be somewhat less limited than is currently the case under the current fund structure. The Fund Administrator is currently barred from the interpretation of any “unclear” matters and from making policy. Unfortunately, this leaves both the Fund Administrator and the applicants and service providers participating

² *NPRM*, paragraph 13.

³ *NPRM*, paragraph 14.

in the program in an untenable position. We believe that an operational structure should be designed in which the Fund Administrator and the FCC could work together to react in a more timely fashion to the questions raised throughout the application and invoicing processes. On a practical basis, when questions arise, there needs to be an authority who can effectively respond in a timely manner and whose answers will be upheld by the Commission. Waiting months for answers to program questions puts applicants and service providers alike – and especially large entities like Chicago Public Schools whose questions may directly affect thousands or tens of thousands of students – in a very difficult position.

With respect to the internal structure of the Fund Administrator, the Commission has asked whether the rules for composition, committee structure, and meetings should be modified.⁴ While the overall structure for USAC is sound, we believe that USAC should have further input from the applicant and service provider communities, including input from members of the community who actually participate directly in the application process. Applicants of all sizes (large and small) and from all sectors of the applicant community (including school districts, libraries, private schools, and state and regional agencies) should be consulted by the FCC and USAC. We believe that such a measure will help the Administrator and the Commission to understand the operational realities facing schools and libraries under this program and remain focused on the primary goals of the Universal Service Program for Schools and Libraries, which is to make resources available to schools and libraries, rather than deny those resources to schools and libraries.

With respect to closed meetings, we believe that closed meetings of the USAC board or subcommittees of the USAC board should be permitted under certain circumstances.⁵ Like any corporate board, there are matters of proprietary information that the board may need to discuss from time to time, and we believe they should be permitted to do so. However, the Commission should assign an observer to these meetings to determine

⁴ *NPRM*, paragraph 15.

⁵ *NPRM*, paragraph 16.

whether the opportunity for closed meetings is being abused, and take appropriate corrective measures if necessary.

The Administrator currently makes quarterly reports to the FCC, and makes recommendations to the Commission as to the collections levels on a quarterly basis. The Commission has asked whether the frequency of these reports should be changed.⁶ While we do not feel strongly whether the reports should be quarterly or not, we do believe that the contributions to the fund should continue to be adjusted in such a way to ensure that adequate funding is available to meet the needs of applicants under the Universal Service Funds. This issue takes on additional importance in light of the application of the Anti-Deficiency Act to the Universal Service Funds. This has led to significant delays in Funding Commitment Decision Letters, which has, in turn, caused serious hardship on applicants and service providers alike.

The Commission also raises the issue of how to deal with delinquency in making payments to the Universal Service Fund.⁷ We believe that such delinquencies should be dealt with harshly, due to the cascading impact that delinquent contributions have on applicants and other service providers. Delinquent contributions can delay commitments to applicants, and disbursements to service providers. These delays adversely affect service providers and applicants, costing thousands or millions of dollars as deadlines are missed and services are not delivered in a timely fashion to students.

One possible solution to this dilemma is raised by the Commission in the NPRM itself.⁸ The Commission asks whether fund borrowing should be permitted, whether payments should be suspended when funds are not available, and whether USF investments should be restricted. We believe that the Administrator should be able to manage the funds as they see fit, within restrictions, and that doing so may alleviate some of the delays faced by applicants and service providers. The Administrator's investment of funds should be audited annually, and as long as those independent audits indicate that the funds are being

⁶ *NPRM*, paragraph 18.

⁷ *NPRM*, paragraph 19.

⁸ *NPRM*, paragraphs 20-21.

well managed, the Administrator should have relatively free reign over how to invest the funds. Returns on these investments could also yield funds that could benefit schools and libraries and which may also well offset some of the costs incurred by the Administrator in the running of the program itself. Restrictions on how the funds can be invested and which limit the opportunity to maximize effectiveness should be reconsidered. It is important to note that the Administrator should have sufficient internal funding to make sure that the Fund is well managed.

Whether or not the rules governing the various funds should be codified by the Commission is another issue raised in the NPRM.⁹ We strongly urge the Commission to codify the rules for the E-rate program. Furthermore, we urge the Commission to look at possibilities for simplifying the program as part of this codification process, rather than further complicating it. Currently a great deal of uncertainty arises from the apparent discrepancies between Commission rules and Administrator practices, and clearing up this confusion will allow applicants to have much greater confidence in the application process. At the same time, however, we do not believe that the codification of these rules should be allowed to derail or delay the Commission's ongoing efforts to rule on appeals and or, as discussed above, contribute to the lack of timely application and/or invoice processing.

In the same paragraph, the Commission also asks whether it should delineate between ministerial errors and deliberate fraud.¹⁰ We are encouraged that the Commission raises this issue, since it is one that has been of concern to CPS and other applicants since the inception of the program. Many of the program rules seem to be built around "trip-ups," most of which are simple ministerial errors. For example, failure to check a box on a form that an applicant is seeking multiyear bids (when it is indicated elsewhere in the form or on the RFP that the applicant is seeking a multiyear bid), and other minor form and process related errors are often used as the rationale to reject applications. We believe that this is the wrong approach, particularly given the incredible level of

⁹ *NPRM*, paragraph 22.

¹⁰ *NPRM*, paragraph 22.

complexity currently present in the E-rate program. The first way to resolve many of these ministerial errors would be to simplify the program; such simplification would, by definition, result in many fewer errors. However, until such time as the program is significantly simplified, we believe the Commission should instruct the Administrator to work with the applicants to identify and resolve ministerial errors whenever possible (provided, of course, that the error is not the result of intentional fraud). We believe that the Commission should instruct the Administrator to keep in mind the goal of the program, which is to provide discounts to schools and libraries, rather than to deny discounts to schools and libraries, and that the Administrator should be instructed to work with applicants to help them get funded when there are ministerial errors, rather than working against applicants to deny funding. On the other hand, we support the efforts of both the Commission and the Administrator to prosecute intentional fraud to the fullest extent of the law.

Performance Measures

We support the Commission's efforts to explore whether there are appropriate performance measures for determining whether the E-rate program has been successful in achieving certain goals or benchmarks.¹¹ However, we approach this issue with a great deal of trepidation. The experience in education with performance measures has been that the measures often fail to accurately capture the important components of education, and that the educational enterprise itself is modified to meet the performance measures, rather than to meet the needs of students. CPS has serious concerns about how to appropriately measure performance of applicants and the administrator, especially without further specific and detailed proposals being presented in the NPRM. We urge the Commission to move with caution in this area.

Regardless of the metrics used, we believe that appropriate metrics should be determined by the Commission for all parties involved in the process, including applicants, service

¹¹ *NPRM*, paragraph 24.

providers, the Administrator, and the Commission. The metrics themselves should be subject to public debate, including debate over how best to collect data on the various metrics, and whether the metrics do indeed capture the impact they are intended to measure. Any performance measures should be subject to public comment and regular review.

To date, the Commission has used connectivity as the primary metric for determining the success of the E-rate program.¹² We believe that this is indeed an appropriate metric for determining success of the E-rate program. However, the Commission has, in the past, relied on the U.S. Department of Education's National Center for Education Statistics (NCES) to collect the appropriate data to determine the degree of connectivity.

Unfortunately, the survey used by NCES does not provide adequate detail to accurately measure connectivity. For example, the actual amount of bandwidth available to each school (or library) is not measured as part of the U.S. Department of Education's survey. Clearly, the mere fact of connectivity is not adequate; that statistic hides the quality of the connection (a dial up connection is far different from a T-3, in terms of the educational opportunities that each presents). We urge the Commission to work closely with NCES to modify the survey currently in use to more accurately measure the appropriate statistics. There may, however, be appropriate vehicles already in place for collecting more appropriate data.

CPS believes strongly that connectivity and its close relatives (such as the number or percentage of classrooms connected, number of computers available to students or patrons, number of connections passing through the firewall, etc.) are the appropriate metrics for determining the success of the E-rate program. Other measures, however, are extremely problematic. In particular, we are concerned that the Commission may seek to determine and isolate the impact of the E-rate program on student learning.

Unfortunately, there are a wide range of variables that go into each student's educational achievements, ranging from parental involvement and pedagogical approach to the interaction between individual students and teachers. In the overall equation, technology

¹² *NPRM*, paragraph 26.

plays a relatively small role, and within the realm of technology, E-rate is only a small part.

The Commission has requested comment on how the impact of the E-rate program might be separated from that of other government programs and funds.¹³ As stated above, we believe that the E-rate program is only a very small part of the overall educational picture. Even within the realm of technology, the range of technology needs in schools that are not eligible for E-rate support far eclipses those that are. As such, the impact of the E-rate program (beyond connectivity) will be almost impossible to measure. That said, we believe that the Commission would be best served to undertake individual case studies to determine the relative impact of E-rate to other initiatives and programs (whether federal government funded or not). We believe that a more global approach is neither possible nor desirable, given the limited data available and the number of variables.

There are a number of different ways in which the efficiency and effectiveness of the program can be measured.¹⁴ We think it is appropriate for the Commission to set internal goals that the Administrator needs to reach, particularly given the large number of tight deadlines to which applicants and service providers are forced to adhere. For example, we would strongly urge the Commission to consider requiring that all funding requests be processed and funding commitments be made prior to June 1 preceding the start of the funding year. Receiving funding commitments in a timely fashion would greatly improve our ability to complete work within the funding year, thus eliminating requests for service delivery extensions, for service substitutions, for SPIN changes, duplicative funding requests in subsequent funding years, and other changes. These delays further complicate the program given that service providers factor in costs for these delays in their bid responses to cover these delays. Service providers are understandably becoming unwilling to provide service until funding commitments are made, or conversely build in additional costs to offset the costs associated with delays in payment which are directly

¹³ *NPRM*, paragraph 28.

¹⁴ *NPRM*, paragraph 29.

tied to delays in funding commitments. This waste is significant, because it keeps other schools and libraries from receiving much needed funding and generally complicates the program. We also believe that the Commission should set deadlines for how long, after being filed with the appropriate agency, the Commission and Administrator have to deal with appeals.

In order to make such deadlines operational, we believe the Commission would need to significantly simplify the program. However, with simplification, we believe that imposing these deadlines would not impose major new burdens on the fund Administrator.

Program Management

The Commission has also asked for specific performance and effectiveness measures for the E-rate Administrator.¹⁵ We believe that performance measures are entirely appropriate for the program administrator. Such measures will have a number of benefits, including allowing the Commission and Administrator to more accurately target where problems in the E-rate administrative process exist and allow both entities to address them more accurately and quickly. Performance metrics for the Administrator should focus on a number of different areas. We believe that those areas should include (but not be limited to) the accuracy of processing applications, the percentage of applications successfully funded, as well as the speed of processing applications. Each of these metrics is critical for different reasons. First, the accuracy of processing applications is critical. In the past we have seen many applications that were initially accepted only to have the decision reversed later; these rejections cause significant hardship on applicants and service providers due to the incredibly lengthy appeal process—the only mechanism available to applicants even when the error is one caused by the SLD. In particular, we believe that the SLD needs to have reviewers who are knowledgeable about the unique technology needs of large districts and understand those

¹⁵ *NPRM*, paragraph 32.

needs vis-à-vis the eligible services list. Second, the percentage of applications successfully funded could serve as a good proxy for determining whether the program is meeting its goals of promoting connectivity to schools and libraries; virtually all applications (except those which are fraudulent) should be funded at some level, and the wholesale denial of applications (which was a problem in earlier years of the program) should be virtually nonexistent. Finally, the speed of processing applications (and the impacts of delays in the funding of applications) is discussed at some length below. The importance of timely processing of applications prior to the start of the funding year cannot be overstated; many of the complications and problems in the program today stem from the failure to process applications prior to the start of the funding year.

The Commission has also requested comment on whether a formula-based approach might be a more appropriate way to distribute funds.¹⁶ Obviously, with few details of a potential formula available, it is difficult (and perhaps premature) to comment on the specifics of a formula-based approach. However, even without these details, we have strong objections to the use of a formula-based approach for the E-rate program.

While the current approach is far from perfect, we believe that it closely matches the goals of the program. The current approach allows for the distribution of resources directly to the neediest schools and districts by targeting funds to those entities. A formulaic approach, on the other hand, would likely damage the original goals of the program, which is to promote connectivity among all the schools and libraries in the country. The E-rate program as currently constructed is clearly balanced towards providing the greatest benefit to those entities with the greatest needs. We believe that this goal is likely to suffer in any formula based approach. In addition, a formula-based approach could significantly hamper efforts to deploy enterprise solutions in larger school districts, such as Chicago Public Schools. These enterprise solutions are more efficient and more effective than traditional solutions, but a formula approach pushing funding down to the individual school could undermine future efforts at developing cost-effective infrastructure.

¹⁶ *NPRM*, paragraph 32.

A formula-based approach is unlikely to provide the same level of benefit that the current discount matrix does. Since these are the entities that the program was specifically designed to help, we believe that a formulaic approach would diminish the benefits of the program to the very entities that need the support of the E-rate most. A formula-based approach would also probably be unable to take into account the widely varying needs of different entities based on their varying curriculum, service offerings, and prior technology investments.

Application Process

CPS strongly supports the Commission's efforts to find ways to improve the application process.¹⁷ We believe that the complexity and difficulty of the application process poses a significant barrier for many school systems and libraries. In fact, CPS has several staff members that have been dedicated to working exclusively on E-rate related issues, which represents a significant financial cost to the district. Many other districts could not absorb such costs, and we believe that this is a significant barrier for many potential applicants.

The overall thrust of the Commission's efforts should be to simplify and clarify the application process. There are a number of steps that the Commission can take in support of this goal. Some of the Forms should be eliminated in at least some instances, if not altogether. For example, the Form 470, which acts as a way to advertise an applicant's desire for services, is entirely duplicative of local procurement efforts in many districts.¹⁸ In addition, we ask that the FCC simplify the overall application process. For example, for large entities, such as CPS, we ask that mechanisms for large batch imports and offline data entry be enabled so that the vagaries of the existing online system can be bypassed for large entities.

¹⁷ *NPRM*, paragraph 37.

¹⁸ For example, while the restrictions in place on procurement at CPS differ from those imposed by the Form 470, the restrictions at CPS are much more stringent than those imposed by the 470. However, the 470 becomes another layer of complexity layered on to the procurement process, resulting in possible funding denials.

The Commission should also review the rules related to the program for clarity. Currently, there is a great deal of confusion in the applicant and service provider communities about the unclear rules of the program. These rules change every year, and have never been collected in a single authoritative location which applicants, service providers, and others can rely upon. The lack of clarity in this area results in extensive confusion on the part of applicants and service providers. Furthermore, since there is no single reliable plain text interpretation of the rules, the program's success is hampered by the many different interpretations by those at the SLD and their subcontractors. The lack of clarity up front in the application process—especially as it relates to eligible services—means that it can be difficult for an applicant to correctly file an application.

The current official “application” process has actually turned into three separate application processes. The first is the published application process – the filing of the various forms (Forms 470, 471, 486, and either Form 472 for applicants or Form 474 for service providers).

The second application process surrounds the program integrity assurance (PIA) review of the Form 471. Questions and requests for additional certifications that are not part of the official OMB-approved form process can, for a large entity like CPS, involve answering numerous questions and providing pages and pages of documentation to justify the funding requests. Unlike the “official” application process, which is documented, the PIA process is much less clearly understood, with numerous additional certifications and questions, (which could cause applicants who answer the questions as written could be jeopardizing their funding requests). The process itself also often involves multiple steps, including duplicative requests for documentation.

The third application process happens at the end of the process, in the invoicing phase. In this invoicing phase, all of the bills for the relevant funding commitments are generally collected – again, involving hundreds of pages even though the provision of these bills is not required in the filing instructions for the invoicing form(s).

All of these processes have stringent deadlines. Failure to meet these deadlines (or any other program requirements) can quickly result in a rejection of the entire funding request, with an impact of millions of dollars. These processes need to be streamlined, so that applicants are not asked for the same information time and again, and so that program requirements are publicly available and easily understood.

The current process for receiving E-rate discounts, including the multiple application processes outlined above, have a number of impacts on applicants. However, the largest problem is the delay that results from the untimely processing of applications. These setbacks in application processing can hinder the implementation of various projects, cause significant billing problems, and even delay the delivery of services to students. In most cases, the second application process, which involves processing the Form 471 through PIA, is not completed until well after the start of the funding year. The delays in sending out the Funding Commitment Decision Letters then cascades down the entire application process. First and foremost, the implementation or installation of services is often delayed, as many applicants can ill-afford the nondiscounted cost of services. These delays force applicants to file service substitutions, as the service originally contracted is no longer available, causing even further delays. As these delays cascade, they build on one another, resulting in longer and longer delays before an applicant receives the benefits of the discounts (or reimbursement) which they are due. These delays can also hurt the credit ratings and creditability of school districts, making it more difficult to borrow funds and negotiate with vendors.

The delays inherent in the application process also deter many vendors from participating in the program. Because vendors may be required to carry the cost of the discounted portion of the bills on their books for months or even years while the application and invoicing processes move along, many vendors choose not to participate in the E-rate program. Vendors can also require payment up front from the applicants, or inflate costs to cover the cost of doing business under the program. If they don't, service providers essentially end up floating loans to the SLD until payment is received. This additional

cost of doing business means that other eligible schools and libraries are kept from benefiting from the program as vendors raise prices. From CPS' experience, there are many vendors, large and small, who are unwilling to participate in the E-rate program because of these delays.

We believe that resolving these delays should be one of the top priorities of the Commission, with respect to the administration of the E-rate process. As indicated above, we believe that the Commission should set a goal of having the Administrator process at least 90% of all applications and funding commitments by June 1 prior to the start of the funding year. In essence, the program can not operate as a discounted program (as it was originally designed) because of the delays in funding commitments. Without knowing an approved discount rate or whether or not internal connections projects, for example, will be funded at all, applicants must face layer after layer of complexity that could have been avoided had funding commitments been issued as intended before the start of the funding year.

The Commission also requested comment on whether an electronic-only notification system would be an appropriate innovation for the E-rate program.¹⁹ Such a solution would certainly work well for applicants like CPS which have significant technology infrastructure. However, we are cognizant that some applicants may not have the resources for an electronic-only notification system. Given the need for documentation in any appeal process, however, it is unclear to us how such a mechanism would give us the needed documentation if errors were to occur.

An additional area where the Commission sought comment is whether there are appropriate processes to streamline the application process for "multiyear" services. We believe that streamlining this approach would be extremely beneficial, as CPS (like most large applicants), often signs multiyear contracts with vendors, or contracts with voluntary extensions. Under the current system, applicants are required to provide the same documentation year after year despite the fact that it has already been reviewed and

¹⁹ *NPRM*, paragraph 37.

approved in the first year of the contract. This re-providing and re-reviewing of materials represents an annual burden to applicants and an unnecessary and duplicative use of Administrator resources which could be reassigned to timely commitments of funding decisions and review of new and complex applications.

Similarly, we would welcome efforts by the Commission to have the Administrator provide more (and more detailed) information on the status of applications (and invoices) via an online tool. Given that applications can spend months undergoing PIA review (without any PIA reviewer attempting to contact the applicant), a review status more complete than “in review” would be beneficial. Similarly, the SLD should make more detailed information on the status of invoices available, as discussed below. Such tools would also allow the Commission to monitor whether the Administrator is processing applications and invoices in a timely fashion.

The Commission specifically sought comment on the timing and delay issues in the E-rate process that the Commission should address, and whether the Administrator and the Commission had enough staff.²⁰ The issues of delay have been addressed in some detail above. While we do not know the specifics of the Commission’s and Administrator’s staffing situations, we do know that the delays that are in place cause significant hardship for applicants and service providers alike. We believe that additional staffing at both the Administrator and the Commission could help relieve these delays. Again, we believe that if that staff focused on the front-end of the process to help eliminate problems before they take place as opposed to focusing on audits, commitment adjustments processes, etc. it would, in the end, create less need to identify problems after funding commitments are made. Resolving issues before funding commitments are made would also further streamline the program. In particular, dedicated staff specifically trained to understand the unique challenges that face different kinds of applicants (such as large urban school districts) would be extremely welcome. Furthermore, these skilled reviewers should be dedicated to applicants for the duration of the funding year, so that the basics of an

²⁰ *NPRM*, paragraph 38.

application do not need to be reviewed again and again with different reviewers within the same funding year.

Competitive Bidding

The issue of competitive bidding is one that is a core tenet of the E-rate program.²¹ However, the reality is that there is little that the Commission can do to ensure multiple responses to bid requests. Instead, the Commission should allow local procurement policies and the marketplace to function.

The best way that the FCC can ensure that applicants get the widest response to bid requests is to ensure that the delays which currently plague the system as described above are solved. These delays act as an active deterrent to service providers who would otherwise be involved in the bidding process, which, in turn, limits competition for contracts. We strongly urge the Commission to resolve these delays as quickly as possible.

We also applaud the Commission's efforts to keep the eligible services list (ESL) updated and relevant to the needs of schools and libraries. We believe that, as technology evolves, the ESL should continue to be updated to reflect new technologies and technology needs. The trial of the on-line eligible products list has been a very useful start, but is of such a small scale that it's practically -useless for the complex technology installations that face school districts such as CPS. We strongly urge the Commission to expand the online ESL to include more products, and to do so as quickly as possible so that applicants can benefit from the opportunities it presents. However, we also ask that the Administrator be directed to ensure that the online ESL is made much more accurate than is currently the case. For example, several items listed on the ESL as conditionally eligible during the last application window have since been determined to be ineligible in all circumstances. We ask that the Administrator ramp up its efforts to ensure that the

²¹ *NPRM*, paragraph 40.

online ESL is as accurate as possible. Furthermore, we ask that the eligibility of items on the online ESL be guaranteed by the Administrator (provided that the item is used in an eligible way), since without that guarantee the online ESL is of extremely limited utility.

Another area in which the Commission can significantly improve the E-rate process is in the realm of technology planning.²² In particular, the current schedule for technology planning is extremely difficult. USAC's scheduling and requirements for technology plans were seemingly made with little consultation with the states or familiarity with the processes that underlie meaningful technology planning. Different states have different schedules for how often, for how long and when technology plans are approved. Many states have had to completely shift their technology planning process – and, equally importantly, their requirements – in order to avoid risking all of their state's E-rate funding. We ask that the Commission consider reviewing the technology planning process to better align it with state/local schedules and requirements. The Commission should incorporate a broader umbrella of technology planning compliance based on the variety of different requirements for tech plans in each state.

In addition, we believe it is worth noting that, in recent years, the technology plan has been expanded to meet a variety of requirements imposed by the SLD. As such, these technology plans have essentially lost their original value as a document for strategic planning for using technology to improve education. We believe that the Commission should revisit the requirements of the technology plan in light of the original intent of technology plans, and consider whether the current requirements of the technology plan are truly necessary.

We also believe that the competitive bidding process rules should be modified somewhat to reflect the realities of competitive bidding in large districts.²³ For example, the current rules on competitive bidding don't reflect the reality that eligible and ineligible services will often be mixed on a single contract for services like basic maintenance. Rather than

²² *NPRM*, paragraph 40.

²³ *NPRM*, paragraph 40.

going out for several different bids on basic maintenance, applicants are likely to seek a vendor who can provide assistance for both eligible and ineligible items.

Similarly, proposals to require a certain number of bids on any RFP may contravene local requirements and simply do not reflect the reality that, in some cases, the scope of an RFP may be so great that there may only be a limited number of vendors capable of providing the service. For example, if Chicago Public Schools seeks proposals for maintenance at each of its almost 600 schools, there are only a very limited number of entities that will be able to provide that maintenance at the level of excellence that CPS will require.

The Commission should also examine and take into account in a more comprehensive fashion the diverse local purchasing requirements around bidding. These local requirements will, in some instances, provide a much more stringent level of protection from waste, fraud, and abuse than program requirements.

Forms

The Forms currently in use for the E-rate program all have logical purposes; however, there are so many forms (both official and unofficial) that, for many applicants the number of forms and the amount of information required on these forms can pose a significant challenge. We strongly support the Commission's efforts to reduce and/or eliminate forms from the program as a whole.²⁴

We believe that the Form 470 can be eliminated and applicants can rely solely on state and local procurement practices which currently govern other technology purchases. We would strongly urge the Commission to reconsider whether the Form 470 is necessary at all. Currently, conflicts between state and local procurement policies and practices and those instituted by the Form 470 cause significant confusion and delay. Given the

²⁴ *NPRM*, paragraph 41.

extremely limited usefulness of the Form 470, we would strong urge the Commission to eliminate the Form 470 and related requirements entirely.

We also urge the Commission to consider further automation of the existing forms, allowing for batch imports and other offline data entry techniques. This would allow applicants to maintain their own databases, and upload the information into the SLD's forms at the appropriate times. These processes would need to be designed such that the information requested/provided in this way also meet the minimum processing standards inherent in the current online application processes available today, and could help meet existing requirements in the Paperwork Reduction Act.

Timing of Application Cycle

The Commission also asked about the timing of the application cycle.²⁵ The timing of this cycle is indeed one of the major problems for many applicants. As mentioned above, the delays inherent in the process pose a significant burden to most applicants. The most important action that the Commission can take with respect to the timing of the application cycle would be to stabilize the timing of the various components of the application process. This means that the various forms should become available at the same time, year after year; the windows should last the same length each year and be at the same time each year; and that virtually all funding commitments should be processed prior to June 1 preceding the funding year.

In response to the Commission's question about how and when to set a date for the collection of National School Lunch Program (NSLP) data, we urge that the Commission not take action on this issue.²⁶ Given that different states collect NSLP data at different times, the Commission should not set a specific date.

²⁵ *NPRM*, paragraph 42.

²⁶ *NRPM*, paragraph 42.

With respect to the Commission's question on multiyear applications, Chicago Public Schools believes that multiyear applications should be available for all eligible technology services. CPS, and many other large entities, typically contract for these services several years at a time, and we believe that all applicants should have either a single multiyear application that covers all the years of the contract or an expedited application process for each of the years of the contract after the first.

USF Disbursements

The Commission seeks comment on whether the E-rate disbursement process could be improved.²⁷ CPS believes that there is a great deal of room for improvement in the invoicing process, although our experience has been that, in the last year, the process has significantly improved.

The greatest problems with the invoicing process from an applicant perspective stem from the lengthy processing time of some invoices, and the significant documentation that must be submitted to the Administrator to accompany these invoices. As mentioned above, negotiating through the invoicing process is, in many ways, an entire application process, complete with numerous conversations back and forth to justify the invoices and explain the services being delivered. This process should be streamlined to eliminate the portions that are clearly duplicative of the existing PIA process. We urge the Commission to adopt guidance for the review of invoices, simplifying the process and allowing applicants and services providers to get applications processed quickly. As stated above, delays in this process are a deterrent to competition.

The Commission also seeks guidance on how best to deal with the roll-over of funds from year to year, and how to ensure that as much of the \$2.25 billion available to

²⁷ *NPRM*, paragraph 60.

schools and libraries is used each year.²⁸ It is our contention that these two solutions go hand in hand. With the benefit of the roll-over, the SLD is able to make commitments beyond the \$2.25 billion available otherwise. Due to the numerous delays and complications inherent in the current E-rate process, it is unlikely that, without the carry over, the disbursements will be able to reach the full \$2.25 billion authorized by the FCC or benefit those applicants who currently do not receive Priority Two discounts because of the high demand on funds. However, with the roll-over, the likelihood of reaching the \$2.25 billion is significantly increased as is Priority Two funds below the 90% discount level.

It is also worth noting at this point that demand in recent program years has dramatically exceeded the amount of funding available. If the past is any guide, the technology needs of schools and libraries are likely to continue to increase as technology becomes a more important part of the services delivered to students and lifelong learners. Without the roll-over, it is unlikely that the fund will stabilize at a level where internal connections will ever be available to all the entities that need such support.

Oversight of the USF

E-rate Beneficiary Audits

CPS strongly believes that all parties in the E-rate process should be held to the highest ethical standards and that deterring fraudulent actions by bad actors is an effective way to ensure that waste, fraud, and abuse is minimized in the program. However, we would strongly urge the Commission and the Administrator to set guidelines for what constitutes waste, what constitutes fraud, and what constitutes abuse.

²⁸ *NPRM*, paragraph 60.

The Commission asks whether independent audits should be required of some applicants, particularly those who receive more than a designated amount of funding.²⁹ We believe that these additional audit requirements are unnecessary. It is important to note that most large public institutions are independently audited annually.

The Commission also poses the question as to whether some applicants should be required to obtain independent annual audits providing compliance with the statutes and the Commission's rules.³⁰ In order to ensure its own compliance with the numerous requirements of the E-rate program, CPS hires an independent auditor to review its E-rate records annually and make recommendations on how CPS should improve its internal processes to promote compliance. This has provided extremely valuable insights into the complexities inherent in auditing for E-rate compliance. Past experience with audits – something with which CPS has ample experience – indicates that auditing for E-rate compliance is no simple task. As noted above, there is no single source for determining what the rules and/or related procedures are in any given circumstance. Instead, E-rate rules and procedures are spread across hundreds of documents on the SLD and FCC websites. In fact, this confusion has led to numerous problems with the auditors sent out to verify compliance on behalf of the Commission and/or the Administrator. In many instances, the auditing teams trained by the SLD specifically to audit for E-rate compliance were unfamiliar with many significant aspects of the program and inclined to find fault where no fault was present. In these instances applicants didn't only need to comply with the requirements of the program, but also had to teach the auditors the details of the program.

In addition to the financial costs of an audit, there are huge non-financial costs to the applicants. During an audit, significant resources are diverted from their usual jobs to meeting the needs of the auditor, including organizing and finding paperwork, assisting and supervising in the inventorying of equipment, and other lost staff time. Again, regardless of whether audits are paid for by the SLD or the applicant, the non-financial

²⁹ *NPRM*, paragraph 71.

³⁰ *NPRM*, paragraph 72.

costs will likely serve as a deterrent to many applicants who do not have the resources to cover these non-financial costs.

Finally, we believe that audits should be in place not merely for applicants, but also for service providers and contributors to the Universal Service Fund. Obviously different criteria would be relevant for each, but it is important that waste, fraud, and abuse be eliminated from all components of the program, not merely the applicants.

The Commission's request for information on whether audits should attempt to distinguish between fraud, negligence, and ministerial errors should be further examined.³¹ We believe that the vast majority of the problems that have been identified through audits fall into the categories of waste and abuse, rather than fraud. We believe that auditors should strive to determine which sort of problems are encountered in each audit, and that the corrective measures should be commensurate with the kind of problem encountered. As mentioned above, we firmly believe that applicants should be held to the rules passed by the FCC, but not to program procedures put in place by the Administrator (whether published or not). Furthermore, we believe that applicants need to be able to rely on the information provided to them by the staff of the Administrator and/or the FCC, and that such information should be binding for the purpose of program compliance, audits, and appeals. Therefore, we ask that the FCC endeavor to release, for each funding year, a complete guide to the rules which apply to applications for that year.

Following an audit, the Administrator should supply a complete copy of the audit report to the auditee within 30 days of the site visit, and should institute a process wherein auditees can contest the findings in an audit and have the audit findings revised. Applicants should be given a minimum of 60 days to respond, and the audit review should be conducted by an Administrator staff person who must be fully familiar with the rules of the program and must audit against the rules that were in place for the funding year(s) in question.

³¹ *NPRM*, paragraph 74

In response to the Commission's question on whether the current structure of E-rate audits is appropriate to the program,³² we believe that there is room for improvement. The current audit process is a confusing mix of auditors from different agencies and firms, theoretically all auditing for program compliance but each with a different understanding of what program compliance means and a different scope as to what is being audited. We believe that the lack of clear rules for the audit process is one of the largest hurdles these auditors or future auditors face. Due to the lack of a single, concise source of guidance, auditors and auditees alike are uncertain of what standards need to be adhered to or at what point the rules and/or interpretations changed and therefore what funding year(s) were impacted. The rules should be published annually, with changes made clear, and those rules should be available online in clear English to help applicants meet the requirements of the E-rate program.

Measures to Deter Waste, Fraud, and Abuse

We appreciate the opportunity to comment on how the Commission should determine what the appropriate measures are to deter waste, fraud, and abuse.³³ The ideas presented in the NPRM are certainly worth exploring further to determine what would be the most effective ways of deterring fraud.

We believe that the proposed approach of setting caps on the amount of funding that any particular entity can request within a set time period³⁴ flies in the face of the program's longstanding recognition that different entities will have widely different technology needs. Indeed, the technology needs of a particular entity can vary widely from year to year, dependent on curricular needs, available matching resources, and a host of other factors. Therefore, setting a cap on the amount an entity can receive in any given year does not seem to be an appropriate or workable solution from an applicant perspective.

³² NPRM, paragraph 75.

³³ NPRM, paragraphs 90-91.

³⁴ NPRM, paragraph 90.

We believe that the best way to eliminate waste and abuse would be to clarify the rules applicable to the program and simplify the application process. Doing so would dramatically reduce waste and abuse, and would likely make it easier to catch fraud (which would serve as a deterrent to those entities considering committing fraud).

The Commission also asked whether a minimum number of bids should be required.³⁵ We strongly believe that requiring a minimum number of bids would be counterproductive, for a number of reasons. First of all, in most cases a local procurement process ensures that the bids are free and fair. Secondly, it is entirely possible that, in some markets and for some products, it may not be possible to find three bidders who are willing to participate in the E-rate process. This can be true both in large markets (where there are few vendors who can meet the extensive needs of a large district) or in a small market (where there might only be a handful of providers willing to work on a low volume project, where many of them might be deterred by the headaches that E-rate participation can entail or where multiple providers of certain services simply do not exist). Therefore, we urge the Commission not to require a minimum number of bids.

The Commission also asks whether setting maximum prices on equipment and services would be helpful.³⁶ While we do not believe that maximum prices are appropriate, it would be extremely useful to applicants and service providers alike if, as part of the expanded online ESL, the manufacturer's suggested retail price (or equivalent) was included for various products. Including this listing would help reassure applicants that the services they are ordering are conditionally eligible, plus would provide an easy source for applicants to research the suggested price of the services in a bid to determine whether the prices are inflated. As part of its local procurement procedures, CPS has asked for this information in certain bidding processes and finds it extremely helpful in measuring the effectiveness and competitiveness of the bid response.

³⁵ *NPRM*, paragraph 90.

³⁶ *NPRM*, paragraph 90.

The Commission also inquired as to whether suspected violations of the rules of the E-rate program should lead to stoppages of payment.³⁷ We strongly believe that stoppages prior to confirmation of violations, and the due process that accompanies that confirmation, are premature. Should a vendor or applicant be guilty of fraud, stoppage of payments should occur. Premature stoppages for other reasons wreak havoc on the delivery of services to students and library patrons.

Other Actions to Reduce Waste, Fraud, and Abuse

In response to the Commission's question as to whether a rule ought to be adopted defining waste, fraud, and abuse,³⁸ we believe the answer is a wholehearted yes. As stated above, we believe that the issues of waste and abuse should be treated separately from those of fraud. Furthermore, we believe the Commission should distinguish between the three when reporting on the results of audits, since the three are distinct and have very different implications when it comes to intent.

After implementing the red-light rule in the *Schools and Libraries Fifth Report and Order*, the issue of how to protect applicants from debarred service providers has gained new importance. Fortunately, there is a relatively easy method for the Commission to address this issue. The list of debarred entities should be published on the websites of both the Commission and the Administrator. This information should be collected in an easy to review format.

Furthermore, the Commission should update the CORES system to indicate in a service provider's record whether the service provider is currently under investigation, and should provide information about past investigations. Once an investigation has been resolved (regardless of the outcome), that information should be included in the service

³⁷ NPRM, paragraph 91.

³⁸ NPRM, paragraph 95.

provider's record on the CORES system, and in the Administrator's SPIN search system. Doing so would allow applicants to verify service providers' claims of a spotless record, and allow applicants to make more informed decisions in their selection of service providers.

We support the Commission's efforts to have more aggressive sanctions, debarment procedures, and disclosures in all the USF programs, and in particular in the E-rate program. We believe that distinguishing between waste, fraud, and abuse as three separate kinds of rule violations is a critical part of this process. We support the Commission's efforts to implement a wider range of sanctions, ranging from debarment and collections to warnings and partial commitment reductions.

We urge the Commission to link the program's debarment process into the debarment processes already in place at the state level. If a vendor or entity is debarred from pursuing E-rate work in one state, we believe the Commission should also debar that vendor or entity from engaging in E-rate activities on a nationwide basis. This will prevent unethical service providers and consultants from moving from state to state, thereby protecting unwitting applicants from being defrauded. In the past, Chicago Public Schools has worked at the local level to debar vendors from participating because of these kinds of problems.

We do not believe that reducing the discount level of an entity is an appropriate response to rule violations. Rather than punishing the guilty party, reducing the discount level of a school or library simply serves to reduce the benefits to school children and library patrons; it punishes the very entities that are supposed to benefit from the program. We would support a more targeted approach to debar specific individuals from the program. In addition, the FCC has not yet made clear how the red-light rule will impact those applications that are in process. Denying funding to an applicant for an action by a service provider that is unknown to the applicant or which may change at various points in time given the 30-day cure opportunity is patently unfair to applicants.

Other Issues

There are a number of other issues that we believe the Commission should consider undertaking to improve program integrity. We believe that these recommendations would allow for a more -simplified and efficient administration of the program, as well as to combat waste, fraud, and abuse.

There are a number of improvements that can be made in the current invoicing process. We ask that the Commission consider instituting a counter-signature requirement on the existing Service Provider Invoice Form (the Form 474, also known as the SPIF). Currently, applicants must get a service provider signature on the Billed Entity Applicant Reimbursement Form (Form 472, or BEAR). The requirement for a counter-signature would allow applicants to ensure that service providers do not bill the fund for services that have not yet been completely delivered. This would also allow applicants to ensure that vendors are billing for the correct time periods; currently, when vendors bill for the incorrect periods, significant delays result as the forms need to be adjusted and refiled. Applicants can provide a bulwark to help minimize this kind of inaccuracy. We also ask that both forms be expanded to include an optional checkbox where an entity can indicate whether this represents payment in full of an FRN; this checkbox would allow the SLD to quickly and easily reallocate funds that otherwise might sit in limbo for months or years if an applicant does not file a Form 500 to reduce the funding request.

We also would like to submit for the Commission's consideration a request that the SLD keep copies of the names and signatures of authorized signatories on file for each billed entity. Currently, whenever an invoice is submitted, the SLD calls to confirm that the individual signing the invoice is authorized to do so. This can cause significant delays as PIA and signatories attempt to reach one another and discuss the issue. Keeping a list of signatories (along with their signatures) on file would significantly reduce these delays.

We also ask that the Commission reconsider its current requirement that the applicant have the funding “in hand” at the time of the Form 471 to pay the nondiscounted portion of the bill. In many instances, such as when applicants are relying on grant funding, such assurances may not be available at the time of the Form 471 submission. We ask that, in those instances where the grant funding may not yet be available, funding requests be processed and, if approved, be conditionally approved pending confirmation of the receipt of grant funds.

We also ask that the Commission reconsider the current “2 in 5” rule, which only allows for the provision of internal connections to entities twice within a five year period. Given the complexity of enterprise networks, such as the network used by Chicago Public Schools to provide service to more than six hundred schools throughout Chicago, we ask that the 2 in 5 rule apply only to equipment dedicated to individual instructional locations, and not to the core network equipment employed by the district to provide services to a number of different locations. The current restrictions have the potential to severely hamper the development of infrastructure using a distributed model to provide services to a number of locations via an enterprise network.

We also ask that the Commission consider modifying the Form 500 to expand its functionality to include a number of additional items. For example, the Form 500, which is essentially a change order document, should be expanded to include SPIN changes, service substitutions, entity substitutions, invoice extensions, etc. Currently, these processes are handled under sparsely documented processes implemented by the Fund Administrator, rather than through official OMB-sanctioned forms. We ask that the Commission realign the Form 500 to include these functions.

The Commission should also consider the current “Item 25D” process in place for verifying that applicants have access to all the resources necessary to make appropriate use of the services funded by the E-rate program. While we applaud the goal of such a review, the reality is that the documentation necessary to verify compliance can represent hundreds or thousands of pages of further paperwork. We believe that the Commission

should reconsider the way verification of these requirements is currently conducted and further streamline that process.

Finally, we ask that the Commission consider clarifying the rules of how multiyear and/or multiphase contracts should be implemented and billed. The current artificial requirements that funding be spent during a specific funding year causes havoc on the development of large infrastructure projects and enterprise networks. For contracts with multiple phases which may span multiple fund years, the Commission should institute a process to preserve allocated funding even if services take longer to implement than the fund year in question, and allow applicants to spend the funding over two or more funding years as the multi-phase project is implemented. This should apply only to delivery and installation of equipment, rather than recurring services.

CONCLUSION

We strongly support the Commission's release of this NPRM, and the Commission's recognition that there are ways to improve a program like the E-rate. We appreciate the opportunity to provide the perspective of Chicago Public Schools, one of the largest applicants participating in the program, on some of the many issues facing the E-rate program. We look forward to participating in the Commission's future efforts to improve the E-rate program.